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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,179	10/29/2003	Yoshitaka Oku	F-8007	6534
28107 7590 01/07/2009 JORDAN AND HAMBURG LLP 122 EAST 42ND STREET SUITE 4000 NEW YORK, NY 10168				
EXAMINER				
ROBERTS, LEZAH				
ART UNIT		PAPER NUMBER		
1612				
MAIL DATE		DELIVERY MODE		
01/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/696,179

Applicant(s)

OKU, YOSHITAKA

Examiner

LEZAH W. ROBERTS

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☒ Claim(s) 7-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

This Office Action is in response to the amendment filed September 18, 2008. All previous rejections have been withdrawn unless stated below.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

Claims 7-10 are objected to because of the following informalities: the term "metaporhic" should read "metamorphic". Appropriate correction is required.

Claim Rejections - 35 USC § 112 – Indefiniteness (New Rejection)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims recite the limitation "a component obtainable form either of them". It cannot be determined what components are encompassed by the limitation, since no reasonable parameters for "obtaining" the components are provided.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 7-10 are rejected under U.S.C. 101 because the claimed invention is directed towards is non-statutory subject matter: "ancient water and/ or ancient salty water" is a naturally occurring product. A cosmetic comprising "at least one of ancient water, ancient salty water and a component obtainable from either of them" includes a mouthwash, which may be water and salt. Therefore the term "cosmetic" does not distinguish the recited composition from the naturally occurring salt water. In regards to a food additive, salt may be a food additive therefore recitation of "food additive" does not distinguish the recited composition from naturally occurring salt water. In regards to claim 9, a solid encompasses ice. In regards to claim 10, water is also a beverage.

Claim Rejections - 35 USC § 102 – Anticipation (Previous Rejections)

1) Claims 1-3 were rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Application No. 2002-343115 to Kaoru, et al. The rejection is maintained and applied to claim 7.

Applicant's Arguments

Applicant argues the ancient water of the reference was isolated from coral reef and the instant claims recite a fracture zone, being a phyllite layer or an ancient

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limestone formation that is a layer that is below a metamorphic rock layer. This argument is not persuasive.

Examiner's Response

The reference discloses the water was obtained from underground or coral reef. Therefore the reference meets the limitation of limestone because coral reef is limestone¹.

2) Claims 1-2 and 5-6 were rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Application No 2000-336951 to Kaoru, et al. The rejection is maintained and applied to claims 8-10.

Applicant's Arguments

Applicant argues the ancient water of the reference was isolated from coral reef and the instant claims recite a fracture zone, being a phyllite layer or an ancient limestone formation that is a layer that is below a metamorphic rock layer. This argument is not persuasive.

Examiner's Response

The reference discloses the water was obtained from underground or coral reef (paragraph 0030). Therefore the reference meets the limitation of below a metamorphic rock layer and ancient limestone because coral reef is limestone.

¹ The Topic: Coral Reef, <http://42explore.com/reef.htm>, Retrieved January 5, 2009, pages 1-6.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LEZAH W. ROBERTS whose telephone number is (571)272-1071. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick F. Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lezah W Roberts/

Examiner, Art Unit 1612

/Frederick Krass/

Supervisory Patent Examiner, Art Unit 1612